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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 24, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20036

DOCKET FILE COPY ORIGINAL

Re: National Association of Black Owned Broadcasters

Dear Mr. Caton:

Please find enclosed for filing the original and nine copies of Comments of the National Association of Black Owned Broadcasters in the following docketed proceedings: PR Docket No. 89-553, PR Docket No. 93-253, PR Docket No. 93-252.

Also enclosed is an extra copy of this document. Please file-stamp this extra copy and return it to the courier. If you have any questions or comments concerning the enclosed materials, please contact the undersigned at the above number.

Sincerely,



Darrin N. Sacks

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 24 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Parts 2 and 90)	PR Docket No. 89-553
of the Commission's Rules to)	
Provide for the Use of 200)	
Channels Outside the)	
Designated Filing Areas in)	
the 896-901 MHz and the 935-)	
940 MHz Bands Allotted to the)	
Specialized Mobile Radio Pool)	
)	
Implementation of Section)	PP Docket No. 93-253
309(j) of the Communications)	
Act -- Competitive Bidding)	
)	
Implementation of Sections)	GN Docket No. 93-252
3(n) and 322 of the)	
Communications Act)	

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COMMENTS

NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceeding (the "NPRM"). NABOB submits that auctioning the 900 Mhz SMR frequencies at issue in this proceeding without specifically including rules which promote economic opportunities for minorities would constitute a failure of the Commission to comply with its obligations under Section 309(j) of the Communications Act, 47 U.S.C. Section 309(j). Pursuant to Section 309(j), the Commission is obligated to: (1) disseminate

licenses to a wide variety of applicants, specifically including businesses owned by members of minority groups, and (2) promote economic opportunity for business owned by members of minority groups. If the Commission auctions the 900 Mhz SMR licenses without providing specific provisions in its rules to promote economic opportunities for minorities, the Commission will violate its statutory obligation under Section 309(j).

I. NABOB HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING

NABOB is the trade association representing the interests of the African American owned commercial television and radio stations and cable television systems throughout the United States. In that capacity, NABOB has two principal objectives: (1) to increase the number of African American owners of communications facilities and (2) to improve the business climate in which African American owned communications facilities operate. The issues raised in the NPRM are fundamental to the interests of NABOB's members.

Congress and the United States Supreme Court have recognized for many years that there are important First Amendment reasons for promoting the ownership and control of communications facilities by minorities. See Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 560-563 (1990). In addition, Congress and the Supreme Court have separately recognized that, to remedy past discrimination,

minorities must be given assistance in obtaining economic opportunities in our society. This second objective has been recognized by Congress in connection with a number of legislative actions in which no First Amendment issues were involved. See Fullilove v. Klutnick, 448 U.S. 449 (1980). NABOB submits, therefore, that it has clear standing and that its comments presented herein should be given substantial consideration by the Commission in this NPRM. See United Church of Christ v. FCC, 359 F.2d 994, 1005, 53 RR2d 2001, 2013-2014 (D.C. Cir. 1966); Michael Matheson et al., 53 RR2d 997, 998 (1983); and Baltimore Area Renewals, 89 FCC 2d 1183, 51 RR2d 727 (1982).

The need for Commission policies to promote minority ownership has been documented in numerous studies. The effort to document that need has been significantly advanced by a recent study prepared by the National Telecommunications and Information Administration ("NTIA"). Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industries, U.S. Department of Commerce, NTIA, Office of Policy Analysis and Development, April, 1995 (the "NTIA Study"). The NTIA Study reports that:

1. Average gross receipts for all minority businesses in 1987 were \$64,132; which was thirty-four percent

(34%) of the \$189,000 averaged by firms owned by white males. NTIA Study at 6.

2. Minorities comprise approximately twenty-five percent (25%) of the U.S. population, but minority firms represent only nine percent (9%) of U.S. businesses. Id.
3. African Americans constitute twelve percent (12%) of the U.S. population, but African American firms represent only three and one-tenth percent (3.1%) of U.S. businesses. Id.
4. The number of African American owned telecommunications companies listed in the Black Enterprise magazine list of the 100 largest African American owned companies decreased from 33 in 1992 to 29 in 1993 and 28 in 1994. In addition, the number of persons employed by those companies decreased from 10,821 in 1992 to 10,076 in 1993 and 10,007 in 1994. NTIA Study at 8.
5. African Americans own only 193 commercial broadcast stations, representing only one and seven-tenths percent (1.7%) of the total in the U.S. Id. at 9.
6. Banks provide white borrowers with \$1.83 in debt for each dollar of equity capital they invest in their businesses, but African American borrowers receive only \$1.16 for each dollar of equity capital invested. Researchers have concluded that "banks treat Black and White loan recipients differently, even when their qualifications do not differ." Id. at 15.

Thus, the Commission can rely upon this significant new study by NTIA as additional evidence of the need for governmental action to promote minority business opportunities in the telecommunications industry.

II. THE COMMISSION IS OBLIGATED PURSUANT TO SECTION 309(J) TO PROMOTE ECONOMIC OPPORTUNITY FOR MINORITIES IN THE AUCTION OF 900 MHZ SMR LICENSES

The Commission's NPRM in this proceeding discusses the Commission's obligation under Section 309(j) of the Communications Act to "promote economic opportunity" for businesses owned by minorities when the Commission auctions spectrum pursuant to the authority granted the Commission under Section 309(j). NPRM at 46, citing 47 U.S.C. § 309(j). The Commission's proposed rules fail to comply with the requirements of the statute. The Commission has proposed in the NPRM that it will comply with its statutory mandate simply by providing:

1. A 10% bidding credit for all businesses with gross revenues of less than \$3 million during the preceding three years. NPRM at 50.

2. A reduced down payment pursuant to which small businesses would pay only a 5% down payment within 5 days of the close of the auction, and 5% more upon grant of the license. The balance of the bid would be paid over the license term. NPRM at 51-52.

The Commission reasoned that, because the capital expenditures required to initiate service in the 900 MHz SMR service are not as substantial as those required for the Personal Communications

Service, specific provisions to promote opportunities for minority owned companies are unnecessary. NPRM at 53.

This analysis is flawed in several respects. First, the NPRM contains no estimates of the capital expenditures needed in the 900 MHz service. Indeed, the Commission asks questions in the NPRM on the capital costs associated with initiation of service. NPRM at 8. Therefore, it is not clear from the NPRM what level of initial capital is actually required, or even what level the Commission envisioned to be required. Therefore, the Commission's determination that the service does not require a significant amount of capital is not supported by any evidence cited in the NPRM.

Moreover, regardless of the amount of capital the Commission contemplates to be required to initiate service in the 900 MHz service, the record in the Commission's prior auction proceedings has clearly demonstrated that there are virtually no minority owners in any non-mass media service licensed by the Commission. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5577-78 (1994). In light of this record, the Commission's proposal to provide no incentives to promote minority ownership in its 900 MHz

SMR auction rules amounts to a complete abrogation of its statutory obligation.

The Commission's proposal to provide incentives for all small businesses falls woefully short of its statutory obligation. The Commission attempts to justify limiting its incentives only to small business with the specious justification that 99% of all minority owned businesses gross less than 1 million dollars per year. NPRM at 52. While this may be true, the converse clearly is not -- 99% of all small businesses are not minority owned. In fact, while minorities comprise approximately twenty-five percent (25%) of the U.S. population, minority firms represent only nine percent (9%) of U.S. businesses. NTIA Study at 6. Therefore, the Commission's reasoning does nothing to suggest that it will promote any meaningful minority ownership. Owning only a small fraction of all small businesses, minority entrepreneurs cannot realistically expect to successfully bid for 900 MHz SMR licenses if the Commission's policies fail to take into account the very limited business base from which minorities start in this process.

Indeed, the failure of the Commission's proposal in the NPRM to make any proposal to account for the difficulties minorities have in raising capital appears to be a clear abandonment of the policies adopted by the Commission in its earlier auction

proceedings. To be blunt, it appears that the Commission has bowed to political pressure and has decided abandon implementation of those provisions of Section 309(j) which may be "out of favor" with some in Congress. The Commission must be mindful that it has a continuing obligation to comply with Section 309(j). The Commission cannot shrink from its obligations under that provision.

NABOB therefore submits that the Commission adopt the following revisions to its proposed 900 MHz auction rules:

1. Provide a 25% bidding credit for all minority owned businesses having up to \$125 million in gross revenues.
2. Limit bidding eligibility on 20% of the channels to minority owned companies.

III. CONCLUSION

Wherefore, NABOB requests that the Commission adopt rules for the auction of 900 MHz SMR licenses which are consistent with the Commission's obligations under Section 309(j), as set forth herein.

Respectfully Submitted,

**THE NATIONAL ASSOCIATION OF
BLACK OWNED BROADCASTERS, INC.**

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